

AMENDED IN SENATE JULY 24, 2003

AMENDED IN SENATE JULY 14, 2003

AMENDED IN SENATE MAY 21, 2003

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 371

Introduced by Assembly Member La Suer

February 14, 2003

An act to amend Section 1246 of the Business and Professions Code, and to amend Section 23158 of the Vehicle Code, relating to blood tests, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 371, as amended, La Suer. Blood tests.

Under existing law, only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer. These personnel include unlicensed laboratory personnel regulated under specified existing laws that provide for and determine the required qualifications for a category of “certified phlebotomy technicians.” In the context of clinical laboratory work, certified phlebotomy technicians generally may not withdraw blood unless supervised by a physically available physician and surgeon, nurse, or clinical laboratory licensee.

This bill would permit a person who has been issued a “certified phlebotomy technician” certificate to withdraw blood in certain locations with general supervision, as defined, at the direction and in the presence of a peace officer, for forensic purposes, regardless of whether the person is employed by a clinical laboratory.

This bill would also incorporate additional changes in Section 1246 of the Business and Professions Code proposed by AB 1087, that would become operative only if AB 1087 and this bill are both chaptered and become effective on or before January 1, 2004, and this bill is chaptered last.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ ^{2/3}. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1246 of the Business and Professions
2 Code is amended to read:

3 1246. (a) Except as provided in subdivisions (b) and (c), and
4 in Section 23158 of the Vehicle Code, an unlicensed person
5 employed by a licensed clinical laboratory may perform
6 venipuncture or skin puncture for the purpose of withdrawing
7 blood or for clinical laboratory test purposes upon specific
8 authorization from a licensed physician and surgeon, provided that
9 he or she meets both of the following requirements:

10 (1) He or she works under the supervision of a person licensed
11 under this chapter or of a licensed physician and surgeon or of a
12 licensed registered nurse. A person licensed under this chapter, a
13 licensed physician or surgeon, or a registered nurse shall be
14 physically available to be summoned to the scene of the
15 venipuncture within five minutes during the performance of those
16 procedures.

17 (2) He or she has been trained by a licensed physician and
18 surgeon or by a clinical laboratory bioanalyst in the proper
19 procedure to be employed when withdrawing blood in accordance
20 with training requirements established by the State Department of
21 Health Services and has a statement signed by the instructing
22 physician and surgeon or by the instructing clinical laboratory
23 bioanalyst that this training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a “certified phlebotomy technician” issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of the regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a “certified phlebotomy technician” that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

(i) At least 40 hours of didactic instruction.

(ii) At least 40 hours of practical instruction.

(iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each “certified phlebotomy technician” shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state's minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars (\$25).

(c) (1) Notwithstanding any other provision of law, a person who has been issued a "certified phlebotomy technician" certificate pursuant to this section may draw blood at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(2) As used in this subdivision, "general supervision" means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a

1 clinical laboratory authorizing only the performance of skin
2 punctures for test purposes.

3 SEC. 1.5. Section 1246 of the Business and Professions Code
4 is amended to read:

5 1246. (a) Except as provided in subdivisions (b) and (c), and
6 in Section 23158 of the Vehicle Code, an unlicensed person
7 employed by a licensed clinical laboratory may perform
8 venipuncture or skin puncture for the purpose of withdrawing
9 blood or for clinical laboratory test purposes upon specific
10 authorization from a licensed physician and surgeon provided that
11 he or she meets both of the following requirements:

12 (1) He or she works under the supervision of a person licensed
13 under this chapter or of a licensed physician and surgeon or of a
14 licensed registered nurse. A person licensed under this chapter, a
15 licensed physician or surgeon, or a registered nurse shall be
16 physically available to be summoned to the scene of the
17 venipuncture within five minutes during the performance of those
18 procedures.

19 (2) He or she has been trained by a licensed physician and
20 surgeon or by a clinical laboratory bioanalyst in the proper
21 procedure to be employed when withdrawing blood in accordance
22 with training requirements established by the State Department of
23 Health Services and has a statement signed by the instructing
24 physician and surgeon or by the instructing clinical laboratory
25 bioanalyst that such training has been successfully completed.

26 (b) (1) On and after the effective date of the regulations
27 specified in paragraph (2), any unlicensed person employed by a
28 clinical laboratory performing the duties described in this section
29 shall possess a valid and current certification as a “certified
30 phlebotomy technician” issued by the department. However, an
31 unlicensed person employed by a clinical laboratory to perform
32 these duties pursuant to subdivision (a) on that date shall comply
33 with this requirement by April 2006, which is three years from the
34 effective date of those regulations.

35 (2) The department shall adopt regulations for certification by
36 January 1, 2001, as a “certified phlebotomy technician” that shall
37 include all of the following:

38 (A) The applicant shall hold a valid, current certification as a
39 phlebotomist issued by a national accreditation agency approved

1 by the department, and shall submit proof of that certification
2 when applying for certification pursuant to this section.

3 (B) The applicant shall complete education, training, and
4 experience requirements as specified by regulations that shall
5 include, but not be limited to, the following:

6 (i) At least 40 hours of didactic instruction.

7 (ii) At least 40 hours of practical instruction.

8 (iii) At least 50 successful venipunctures.

9 However, an applicant who has been performing these duties
10 pursuant to subdivision (a) may be exempted from the
11 requirements specified in clauses (ii) and (iii), and from 20 hours
12 of the 40 hours of didactic instruction as specified in clause (i), if
13 he or she has at least 1,040 hours of work experience, as specified
14 in regulations adopted by the department.

15 It is the intent of the Legislature to permit persons performing
16 these duties pursuant to subdivision (a) to use educational leave
17 provided by their employers for purposes of meeting the
18 requirements of this section.

19 (3) Each “certified phlebotomy technician” shall complete at
20 least three hours per year or six hours every two years of
21 continuing education or training. The department shall consider a
22 variety of programs in determining the programs that meet the
23 continuing education or training requirement.

24 (4) He or she has been found to be competent in phlebotomy by
25 a licensed physician and surgeon or person licensed pursuant to
26 this chapter.

27 (5) He or she works under the supervision of a licensed
28 physician and surgeon, licensed registered nurse, or person
29 licensed under this chapter, or the designee of a licensed physician
30 and surgeon or the designee of a person licensed under this chapter.

31 (6) The department shall adopt regulations establishing
32 standards for approving training programs designed to prepare
33 applicants for certification pursuant to this section. The standards
34 shall ensure that these programs meet the state’s minimum
35 education and training requirements for comparable programs.

36 (7) The department shall adopt regulations establishing
37 standards for approving national accreditation agencies to
38 administer certification examinations and tests pursuant to this
39 section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars (\$25).

(c) (1) (A) A “certified phlebotomy technician” may perform venipuncture or skin puncture to obtain a specimen for nondiagnostic tests assessing the health of an individual, provided that the technician works under the general supervision of a licensed physician and surgeon, a registered nurse, or a person licensed under this chapter.

(B) As used in this paragraph, “general supervision” means that the supervisor of the technician reviews the competency of the technician to perform venipuncture or skin puncture prior to the technician’s first blood withdrawal, and on an annual basis thereafter. The supervisor is also required to determine, on a monthly basis, that the technician complies with appropriate venipuncture or skin puncture policies, procedures, and regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or person licensed under this chapter, shall be available for consultation with the technician, either in person or through electronic means, at the time of blood withdrawal.

(2) (A) Notwithstanding any other provision of law, a person who has been issued a “certified phlebotomy technician” certificate pursuant to this section may draw blood at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(B) As used in this paragraph, “general supervision” means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician

1 is working to provide onsite, telephone, or electronic consultation,
2 within 30 minutes when needed.

3 (d) The department may adopt regulations providing for the
4 issuance of a certificate to an unlicensed person employed by a
5 clinical laboratory authorizing only the performance of skin
6 punctures for test purposes.

7 SEC. 2. Section 23158 of the Vehicle Code is amended to
8 read:

9 23158. (a) Notwithstanding any other provision of law, only
10 a licensed physician and surgeon, registered nurse, licensed
11 vocational nurse, duly licensed clinical laboratory scientist or
12 clinical laboratory bioanalyst, a person who has been issued a
13 “certified phlebotomy technician” certificate pursuant to Section
14 1246 of the Business and Professions Code, unlicensed laboratory
15 personnel regulated pursuant to Sections 1242, 1242.5, and 1246
16 of the Business and Professions Code, or certified paramedic
17 acting at the request of a peace officer may withdraw blood for the
18 purpose of determining the alcoholic content therein. This
19 limitation does not apply to the taking of breath specimens. An
20 emergency call for paramedic services takes precedence over a
21 peace officer’s request for a paramedic to withdraw blood for
22 determining its alcoholic content. A certified paramedic shall not
23 withdraw blood for this purpose unless authorized by his or her
24 employer to do so.

25 (b) The person tested may, at his or her own expense, have a
26 licensed physician and surgeon, registered nurse, licensed
27 vocational nurse, duly licensed clinical laboratory scientist or
28 clinical laboratory bioanalyst, person who has been issued a
29 “certified phlebotomy technician” certificate pursuant to Section
30 1246 of the Business and Professions Code, unlicensed laboratory
31 personnel regulated pursuant to Sections 1242, 1242.5, and 1246
32 of the Business and Professions Code, or any other person of his
33 or her own choosing administer a test in addition to any test
34 administered at the direction of a peace officer for the purpose of
35 determining the amount of alcohol in the person’s blood at the time
36 alleged as shown by chemical analysis of his or her blood, breath,
37 or urine. The failure or inability to obtain an additional test by a
38 person does not preclude the admissibility in evidence of the test
39 taken at the direction of a peace officer.

1 (c) Upon the request of the person tested, full information
2 concerning the test taken at the direction of the peace officer shall
3 be made available to the person or the person's attorney.

4 (d) Notwithstanding any other provision of law, no licensed
5 physician and surgeon, registered nurse, licensed vocational nurse,
6 duly licensed clinical laboratory scientist or clinical laboratory
7 bioanalyst, person who has been issued a "certified phlebotomy
8 technician" certificate pursuant to Section 1246 of the Business
9 and Professions Code, unlicensed laboratory personnel regulated
10 pursuant to Sections 1242, 1242.5, and 1246 of the Business and
11 Professions Code, or certified paramedic, or hospital, laboratory,
12 or clinic employing or utilizing the services of the licensed
13 physician and surgeon, registered nurse, licensed vocational nurse,
14 duly licensed clinical laboratory scientist or clinical laboratory
15 bioanalyst, person who has been issued a "certified phlebotomy
16 technician" certificate pursuant to Section 1246 of the Business
17 and Professions Code, unlicensed laboratory personnel regulated
18 pursuant to Sections 1242, 1242.5, and 1246 of the Business and
19 Professions Code, or certified paramedic, owning or leasing the
20 premises on which tests are performed, shall incur any civil or
21 criminal liability as a result of the administering of a blood test in
22 a reasonable manner in a hospital, clinical laboratory, medical
23 clinic environment, jail, or law enforcement facility, according to
24 accepted venipuncture practices, without violence by the person
25 administering the test, and when requested in writing by a peace
26 officer to administer the test.

27 (e) Notwithstanding any other provision of law, a person who
28 has been issued a "certified phlebotomy technician" certificate
29 pursuant to Section 1246 of the Business and Professions Code and
30 who is authorized by this section to draw blood at the request and
31 in the presence of a peace officer for purposes of determining its
32 alcoholic content, may do so in a jail, law enforcement facility, or
33 medical facility, with general supervision.

34 (f) The Certified Phlebotomy Technician I or II shall carry a
35 current, valid identification card issued by the State Department
36 of Health Services, attesting to the technician's name, certificate
37 type, and effective dates of certification, when performing blood
38 withdrawals.

39 (g) As used in this section, "general supervision" means that
40 the supervisor of the technician is licensed under the Business and

1 Professions Code as a physician and surgeon, physician assistant,
2 clinical laboratory bioanalyst, registered nurse, or clinical
3 laboratory scientist, and reviews the competency of the technician
4 before the technician may perform blood withdrawals without
5 direct supervision, and on an annual basis thereafter. The
6 supervisor is also required to review the work of the technician at
7 least once a month to ensure compliance with venipuncture
8 policies, procedures, and regulations. The supervisor, or another
9 person licensed as a physician and surgeon, physician assistant,
10 clinical laboratory bioanalyst, registered nurse, or clinical
11 laboratory scientist, shall be accessible to the location where the
12 technician is working to provide onsite, telephone, or electronic
13 consultation, within 30 minutes when needed.

14 (h) Nothing in this section shall be construed as requiring the
15 certified phlebotomy technician who is authorized to withdraw
16 blood by this section at the request and in the presence of a peace
17 officer for purposes of determining alcoholic content to be
18 associated with a clinical laboratory or to be directly supervised
19 after competency has been established.

20 (i) If the test given under Section 23612 is a chemical test of
21 urine, the person tested shall be given such privacy in the taking
22 of the urine specimen as will ensure the accuracy of the specimen
23 and, at the same time, maintain the dignity of the individual
24 involved.

25 (j) The department, in cooperation with the State Department
26 of Health Services or any other appropriate agency, shall adopt
27 uniform standards for the withdrawal, handling, and preservation
28 of blood samples prior to analysis.

29 (k) As used in this section, “certified paramedic” does not
30 include any employee of a fire department.

31 (l) Consent, waiver of liability, or the offering to, acceptance
32 by, or refusal of consent or waiver of liability by the person on
33 whom a test is administered, is not an issue or relevant to the
34 immunity from liability for medical or law enforcement personnel
35 or other facilities designated under subdivision (d).

36 SEC. 4. Section 1.5 of this bill incorporates amendments to
37 Section 1246 of the Business and Professions Code proposed by
38 both this bill and AB 1087. It shall only become operative if (1)
39 both bills are enacted and become effective on or before January
40 1, 2004, (2) each bill amends Section 1246 of the Business and

1 Professions Code, and (3) this bill is enacted after AB 1087, in
2 which case Section 1 of this bill shall not become operative.

3 *SEC. 5. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or safety*
5 *within the meaning of Article IV of the Constitution and shall go*
6 *into immediate effect. The facts constituting the necessity are:*

7 *In order for the provisions of this act to take effect as soon as*
8 *possible, it is necessary that this act take effect immediately.*

